APPENDIX

LETTER DATED OCTOBER 8, 1982 TO HONORABLE VINCENT P. BIUNNO FROM JOHN L. McDERMOTT

Dear Judge Biunno:

I have received Mr. Kuchta's motion, returnable October 25, 1982, seeking an Order "for a stay of the $5,418.00 to McDermott and Allstate of docket no. 80,405." Apparently, what Mr. Kuchta is referring to is your Order of July 2, 1982 entering judgment for costs as mandated by the United States Court of Appeals for the Third Circuit. I am enclosing a copy of Your Honor's Order of July 2, 1982 and a copy of the Judgment Order of Third Circuit dated May 10, 1982.

With regard to Mr. Kuchta's statements concerning his petition for certiorari to the United States Supreme Court, what has happened is this. (*Mr. Kuchta filed some unspecific papers with the Supreme Court without filing a petition for certiorari. He then asked for an extension of time within which to file a petition for certiorari and Justice Brennan) granted* him an extension of time to file.

We filed a motion with the New Jersey Superior Court for an Order directing the Clerk of that Court to pay to our client the $5,418.00 judgment for costs from funds being held by the Clerk for Mr. Kuchta. That motion was returnable on September 17, 1982. On September 13th, I wrote Judge Halbertsadter, to whom our motion had been assigned, and withdrew the motion, without prejudice, pending the disposition of Mr. Kuchta's petition for certiorari. A copy of my letter of September 13th to Judge Halberstadter is enclosed. While we agree to withhold attempting to collect the judgment ordered by

Your Honor, we oppose Mr. Kuchta's application to vacate your Order for judgment as the Order was validly entered and mandated by the Third Circuit. We request that Mr. Kuchta's motion to this effect, returnable October 25, 1982, be denied.

Respectfully submitted,

McDermott, McGee & Ruprecht

By: /s/ John L. McDermott

JOHN L. McDERMOTT

UNITED STATES COURT OF APPEALS

DISTRICT OF NEW JERSEY (Newark)
Case No. 17,175

Title of case Bertil Kaudern vs. Allstate Insurance Company, Appellant.

Attorneys for Appellant James P. Richardson, Victor C. Hansen, Mead, Gleeson, Hansen & Pantages

Attorneys for Appellee Jerome M. Lynes, Joseph M. Nolan, Nolan & Lynes

No. Below: Civil Action No. 479-64

Judge Below: James A Coolahan

Date of Judgement:

Notice of Appeal Filed: January 30, 1968

Date 1968 Mar. 11

Account of Appellant Clerk's fees $25.00

UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT

DOCKET NO. 80-2208

Walter Kuchta & Lillian Kuchta,
& United States Government Et Al.
Plaintiffs-Appellants,

vs.

Allstate Insurance Company,
Firm of McDermott & McGee,
& State of New Jersey Et. Als.
Defendants-Appellee.

CIVIL ACTION NOTICE OF MOTION FOR A STAY & TO HEAR MOTION

Please take notice, I, Walter Kuchta appeal to the Third Circuit Court for a stay. The undersigned plaintiff (prose) shall apply to such judges as may be hearing motion at the Federal Courthouse in Philadelphia, Penna. For an order for a stay of the $5,418.00 to McDermott and Allstate of Docket No 80-405. As the Supreme Court of the United States granted an extension of time, as a copy will be attached and to hear motion of June 12, 1982 which was in the appeals court & never heard. I pray that these motions to be in open court, so I can appear. And these motions should be heard as soon as possible because I will apply to Supreme Court of the United States for a stay bery soon. Because of the fraud by McDermott in the State courts under rule 4;5-8 pleading special matters and under rule of pleading special matters in federal rules (B) fraud mistake condition of mind. Rule 9-B fraud.

Page 1.–The letter of February 29, 1968, which Lillian Kuchta *never received the infant child or her money, Lillian Kuchta.*

Page 2.–*The warrant of satisfaction of judgment which was dated January 22, 1968 which was never paid* and it explains the *fraud* in the state court under Rule 4;5-8 and this explains the fraud this should never have been filed.

Page 3.–January 23, 1968, Lillian Kuchta sent letter to McDermott, Gaffy & Webb because many times she wanted her money and sent for her money and was refused and had to write a letter like this.

Page 4.–Warrant of satisfaction states they were paid and this is fraud letter of March 17, 1970 there was no cashed checks.

Page 4A.–Letter 3-5-70 show the same.

Page 5.–Letter of Dec. 6, 1972.

Page 6.–Letter of Dec. 7, 1972.

Page 7.–All these letters show the fraud by McDermott was in the Appeal Court for summary judgment.

Page 8.–From August 14, 1973, no checks were sent or cashed.

Page 9.–Shows part of the money for Walter Kuchta in the State Court, and money missing and stolen, the medical award to Walter Kuchta, and this can be used by the Federal Courts for a stay.

Page 10.–Extension of time by Supreme Court of United States.

Page 11.–Letter from Clerk of Supreme Court of United States.

Page 12.–Court order of Honorable Vincent P. Buinno.

Page 13.–Under oath of Lillian Kuchta giving power of attorney to her husband Walter Kuchta.

Page 14.–The complaint.

Page 15.–For United States Court of Appeals for the Third Citcuit orders (2).

Page 16.–Where Mr. McDermott has lied to the court that money of Lillian Kuchta & infant Sandra Kuchta was deposited in the court that is the federal transcript.

Page 17.–Court order shows no deposit for Lillian Kuchta and infant, Sandra Kuchta, only to Walter Kuchta, which is not the correct amount.

Page 18.–Letter that it was not deposited in the court for Lillian Kuchta & infant Sandra Kuchta the money was stolen and this is fraud.

Page 19.–This is letter of McDermott for motion which was never heard in the Appeals Court.

Page 20.–The motion which was not heard in Court or no court order was given and this should be heard and court stamp is on motion on top of page.

Page 21.–Shows the Federal rule on fraud Rule 9-B fraud: mistake condition of mind.

Page 21A.–Same page shows the state of New Jersey. 4:5-8 pleading special matters—(A) fraud: mistake condition of mind. This statue of rules which Mr. McDermott committed in the courts that is fraud.

Page 22.–Show court order in state courts and he is not entitled this money because of fraud that is why McDermott should not be granted this money because of fraud.

Page 23.–Shows you how McDermott and Allstate lied to the courts in their brief to the Appeals Court they say they paid the Government bill, this is fraud upon the court.

Page 23.–As next page 23 shows the bill was wavered by the Government.

Page 23X.–This money was awarded by the Court but never paid or put into state court it also shows this in the warrant of satisfaction.

Page 24.–This is part of defendant brief in the Appeals Court saying that Lillian Kuchta and infant Sandra Kuchta *were paid*, as *letters in these*

papers prove they were not paid. This is fraud warrant of satisfaction put in the courts and McDermott should be made to pay for the illegal things he does to poor people.

Page 25.–Both McDermott and Sellars worked for Allstate Insurance Co. only McDermott was of the case in the Courts. And McDermott's brief saying about the $2,579.33 is lying to the Courts of Appeal. Nothing was said by the plaintiffs and this is complete lying by McDermott.

Page 26.–This is the complaint filed after he put it in state court not paying the plaintiffs correct amount, and stealing Lillian Kuchta and infant Sandra Kuchta money.

Page 27.–Because statute of fraud the plaintiffs was denied. The Federal Civil Rights Act, 42 U.S.C. § 1983 provides and also denied constitutional right were denied to the plaintiffs because of the fraud in the courts.

Mr. McDermott had only about six pages of the transcript, some were the plaintiffs' but had put in a large book and has committed fraud upon the court and to the plaintiffs. The court should turn this over to the federal attorney office, because of the fraud, and miscarriage of justice upon the plaintiffs there should be no fraud in the courts, or against the plaintiffs, or stealing of any money from jury awards of judges award. Because of the fraud summary judgment should be awarded to the plaintiffs in the full amount of complaint. The plaintiffs should be granted a stay, because of the fraud, and be granted justice not a miscarriage of justice, which was done to the courts, and to the plaintiffs. The plaintiffs were denied the due process of law of the constitution of the

United States, because of fraud by defendants in the court, and this fraud upon the court and plaintiffs, and also denied civil rights in the courts.

Respectfully submitted

/s/ Rev. Walter Kuchta

REV. WALTER KUCHTA
BOX 101
LINDEN, N.J. 07036

October 15, 1982

AFFIDAVIT

STATE OF NEW JERSEY:
: ss
COUNTY OF UNION :

I, Walter Kuchta, being duly sworn according to law upon his oath deposes and says:

1-I, Walter Kuchta, an ordained minister.

2.-The suit was brought after Allstate and McDermott put into court the money which was not the right amount. Which my wife and infant daughter's jury awards are stolen.

3.-They stole my wife's money and infant childs money and part of my money.

4.-McDermott stated in the transcript in federal court that the state has the money for my wife and infant child.

5.-I went to the state of New Jersey to ask for my wife's and infant daughter's jury awards. *The clerk stated to me that are no awards for them deposited in the court . . .*

6.-I, Walter Kuchta, have the proof that the awards were not paid or deposited in court. Also the medical award which was awarded to Walter Kuchta by the court . . .

7.-On January 22, 1968, there was a warrant of satisfaction of judgment that they were paid, which is not true. They had lied to the court. On January 23, 1968, Lillian Kuchta asked for her money by letter.

8.-Mr. McDermott does not go by the transcript. Mr. McDermott only had a couple of pages in the tran-

script, I believe about six maybe less, and put a big book in the appeals court which was not in the transcript. Again, he does not tell the truth to the court.

So how could we have a cost of $5,418.00?

9.–My wife's last wish before she died was to get her money and her infant daughter's money which Allstate and lawyer McDermott refused to pay, and did not put it into the state which they had lied about in the transcript about my wife's jury awards and infant child jury award and also judges award. These awards were kept by Allstate Insurance Co. and lawyer McDermott. These awards are stolen. I have to abide by her last wish before she passed away to God's other world to get her jury award and infant daughter jury award which were never paid, because Allstate Insurance Co. and the lawyer refused to pay Lillian Kuchta *many times* she went and was refused the awards given by the jury.

/s/ Rev. Walter Kuchta
REV. WALTER KUCHTA
(Pro se)
Box 101
Linden, N.J. 07036

NOTARIZED

LETTER DATED FEBRUARY 29, 1968 FROM JOHN J. GAFFEY TO MRS. LILLIAN KUCHTA

Dear Mrs. Kuchta:

Enclosed herewith is a check #09 524072 in the amount of $300.00 payable to Lillian Kuchta.

Very truly yours,
Garrey, Webb & McDermott

By: /s/ John J. Gaffey

No letter has been sent out no stamp or name and address or checks to Lillian Kuchta or infant Sandra Kuchta.

On January 22, 1968 Mr. McDermott should not have filled the warrant of satisfaction. He did not tell the truth to the court.

LETTER DATED JANUARY 22, 1968 TO CLERK NEW JERSEY SUPERIOR COURT FROM JOHN J. GAFFEY

Dear Sir:

Enclosed please find original and two copies of Warrant for Satisfaction of Judgment. This Warrant requires a little explanation. The Warrant, in effect, only discharges two judgments—one rendered in favor of the infant, Sandra Kuchta, and the other by Lillian Kuchta. The judgment rendered in favor of Walter Kuchta was reversed and sent back for a new trial as to damages only, and we are taking a release from him since there is

no judgment on record as far as he is concerned. Will you please mark the third copy ""Filed" and return to us in the enclosed stamped envelope.

Very truly yours,
Gaffey, Webb & McDermott

By: /s/ Joseph J. Gaffey
JOHN J. GAFFEY

JJG:G enc

UNION COUNTY SURROGATE'S COURT
AFFIDAVIT IN LIEU OF GUARDIANSHIP

STATE OF NEW JERSEY :
:ss.
COUNTY OF UNION :

Lillian Kuchta, being duly sworn, says:

1. I am the mother of Sandra Kuchta, a minor of the age of twelve years, who resides with me at 3206 Tremley Point Road, Linden, in the County of Union and State of New Jersey.

2. The father of said minor has consented to have me receive the assets herein below stated for the benefit of the minor.

3. The real estate of the said minor will not exceed in value the sum of $100.00 and the personal estate will not exceed in value the sum of $1,000.00 and the same consist of: a $500.00 judgment recovered in the Superior Court, Law Division, Somerset County, on December 7, 1961 against James Rice and Antoinette Rice.

Lillian Kuchta
Mrs. W. Kuchta

TO THE CLERK OF THE SUPERIOR COURT OF THE STATE OF NEW JERSEY:

WHEREAS, a civil action was commenced in the Superior Court of New Jersey, Law Division, Somerset County, bearing Docket No. L-14202-58, wherein Walter L. Kuchta and Sandra L. Kuchta, an infant, by her Guardian and Litem, Walter L. Kuchta, appear as plaintiffs, and James Rice and Antoinette Rice appear as defendants; and

WHEREAS, a civil action was commenced in the Morris County District Court, bearing Docket No. 38398, wherein (Walter Kuchta) and Lillian Kuchta appear as plaintiffs and James Rice and Antoinette Rice appear as defendants; and

WHEREAS, said civil action commenced in the Morris County District Court was consolidated with the aforementioned action commenced in the New Jersey Superior Court, by Order of said Court dated September 29, 1960, and was by said Order removed to the New Jersey Superior Court and that no further proceedings be taken in such action in the Morris County district Court; and

WHEREAS, as a result of the trial of the aforementioned actions a judgment was rendered in this Court in favor of the plaintiff, Walter L. Kuchta, and against the defendants in the sum of $7,500.00; and in favor of Lllian Kuchta in the sum of $300.00 and against defendants; and in favor of Walter L. Kuchta, as Guardian and Litem of Sandra L. Kuchta, an infant, in the sum of $500.00 and against defendants; and whereas an appeal was taken to the New Jersey Superior Court, Appellate Division, from the judgments in favor of the plaintiffs, aforesaid, and against defendants, aforesaid; and whereas the Appellate Division of the New Jersey Supe-

rior Court, by its decision, decided June 7, 1963, affirmed the judgment in favor of Lillian Kuchta for $100.00 for damages for personal injuries and $200.00 for property damage, without costs, and also affirmed the judgment in favor of Sandra Kuchta for $500.00 for damages for personal injuries, without costs, *and also affirmed the judgment in favor of Walter L. Kuchta for $120.00 representing medical expenses incurred in behalf of his wife and child,* without costs, and reversed the judgment in favor of Walter Kuchta for $7500.00 for damages for personal injuries and consequential damages with direction for a new trial limited to the issue of damages; and

WHEREAS, in due course there issued from the Appellate Division its Mandate returning the case of Walter L. Kuchta vs. James B. Rice and Antoinette Rice, to the Law Division of the New Jersey Superior Court for trial; and

WARRANT OF SATISFACTION

WHEREAS, Lillian Kuchta has received the sum of $300.00 in payment of the judgment rendered in her favor; and

WHEREAS, Walter L. Kuchta, as Guardian and Litem of his and Lillian Kuchta, as person authorized by Surrogate of Union County to act in behalf of Sandra Kuchta, daughter, Sandra Kuchta, has received payment of the judgment rendered in favor of Sandra Kuchta, an infant, and against defendants,

THEREFORE, you are hereby directed and authorized to enter this acknowledgement of satisfaction on the record of the said judgment and for your so doing this shall be your sufficient warrant and discharge in that behalf.

IN WITNESS WHEREOF each of the undersigned has hereunto set his hand and seal this 17th day of January 1968.

/s/ Walter Kuchta
WALTER L. KUCHTA, as natural father and guardian ad litem of Sandra Kuchta.

/s/ Lillian Kuchta
LILLIAN KUCHTA, individually and as person authorized by the Surrogate of Union County to act in behalf of Sandra Kuchta.

SIGNED, SEALED AND DELIVERED
—in the presence of
Alastair J. Seller
ALASTAIR J. SELLER

STATE OF NEW JERSEY:

: ss.

COUNTY OF ESSEX :

BE IT REMEMBERED that on this 17th day of January 1967, before me, the subscriber, a Notary Public of New Jersey personally appeared WALTER L. KUCHTA and LILLIAN KUCHTA, his wife, who, I am satisfied, are the persons named in and who executed the within Instrument, and thereupon they acknowledged that they signed, sealed and delivered the same as their voluntary act and deed, for the uses and purposes therein expressed.

Marion Giuliano
of New Jersey
MARION GIULIANO
NOTARY PUBLIC
OF NEW JERSEY
MY COMMISSION EXPIRES JULY 7, 1971

I hereby certify that the foregoing is a true copy of the original on file in my office.
Mortimer G. Newmen Jr.
CLERK

LETTER DATED JANUARY 23, 1968 TO GAFFY AND WEBB FROM MRS. WALTER KUCHTA

Sirs:

This is a letter asking you not to give the checks concerning Lillian Kuchta and her daughter to the husband and father Walter KUCHTA, AS I am fileing for a legal separation and I will need the amount that is to come to me (Lillian Kuchta).

Thank you,

Mrs. Walter Kuchta
MRS. WALTER KUCHTA

LETTER DATED MARCH 19, 1970 TO GAFFEY, WEBB, & McDERMOTT, ESQS. FROM CHARLES C. HAUS

Attention: John J. Gaffey

Dear Mr. Gaffey:

Enclosed is the information you requested on the various drafts. You'll note that *none of the drafts have been cashed.*

If you need any further kindly let me know. Incidently, the supervision of this file is being assigned to *Dave Cohen.*

Very truly yours,

Charles C. Haus
CHARLES C. HAUS
District Claim Manager

LETTER DATED MARCH 5, 1970 TO
DALZIOL FROM CHARLES C. HAUS
Re: File 39H24778
Kuchta v. Rice

Dear John,

Mr. Gaffey has asked me to obtain and send to him the following original drafts:

1. Draft 09519477, dated 1-29-68 in the amount of $500 payable to Lillian Kuchta, mother, and the person authorized by the Surrogate of Union County to act in behalf of Sandra Kuchta.

2. Draft 09519478, dated 1-29-68 in the amount of $500 payable to Lillian Kuchta and Walter Kuchta, her husband.

3. Draft 09424072, dated 2-28-68 in the amount of *$300 payable to Lillian Kuchta c/o Gaffey, Webb* & McDermott. You may find the second draft *was cancelled and never cashed.*

Mr. Gaffey would like to have these as soon as possible as he needs them to support motions in connection with Kuchta's latest suit.

Charles C. Haus
CHARLES C. HAUS
District Claim Manager

LETTER DATED DECEMBER 7, 1972 TO GAFFEY, WEBB AND McDERMOTT FROM NOLAND AND LYNES

Dear Mr. Gaffey:

Thank you for your prompt response to our request in forwarding to us the correspondence and check in the above-captioned matter. We note that letter from allstate to John Dalziel dated March 5, 1970 indicates *that none* of the *checks* or drafts issued by Allstate *had been cashed as of 1970.* Would you please advise our office and also provide us with documentation as to whether or *not those drafts have been cashed as of this time.*

Thank you for your cooperation.

Very truly yours,

NOLAN AND LYNES
A Professional Corporation

By: Jay Scott MacNeill
JAY SCOTT MACNEILL

EXCERPTS FROM DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

* * *

. . . (230) address on a piece of paper and gave it to Mrs. Kuchta and asked him to see Miss McCarthy the next day. He told me he would keep the appointment. I wrote Judge Garth on what I had done.

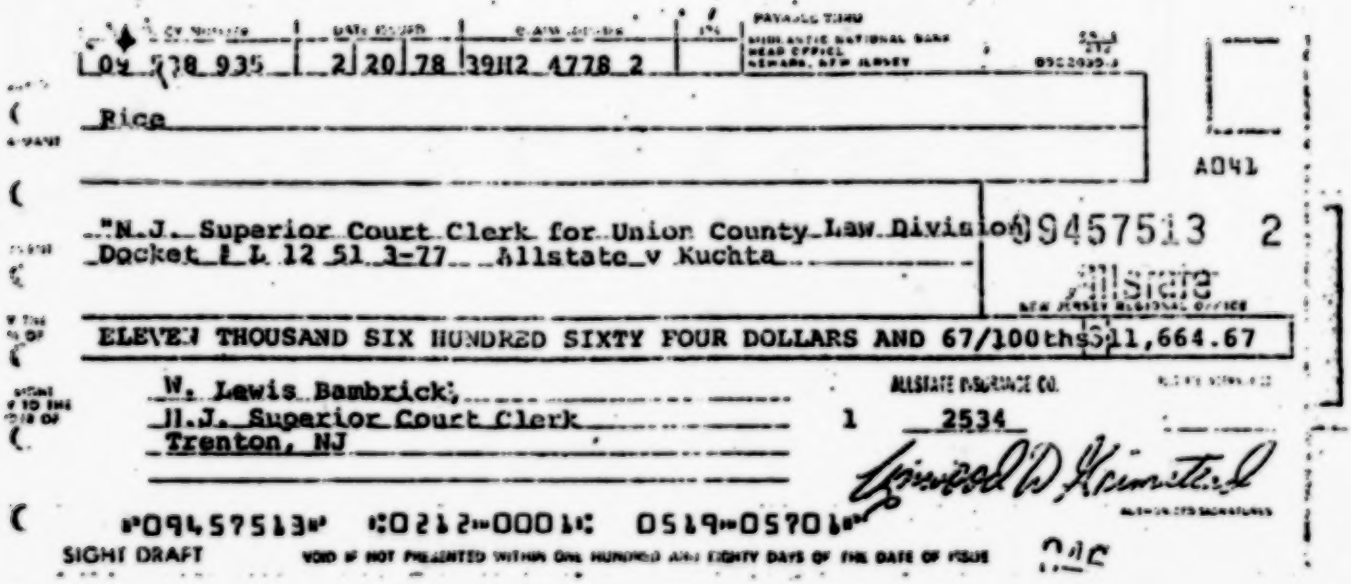
28. On Dec. 4, 1972, I received a message from my secretary that Mr. Jay Scott MacNeil of the law firm of Nolan & Lynes had phoned me. I returned the call and spoke to Mr. MacNeil. He told me that his firm was representing Mr. Kuchta and requested certain information pertaining to the case. Attached hereto is a copy of a letter (marked Schedule "K") I wrote to Mr. MacNeil, *dated Dec. 6, 1972*, which you will note Mr. MacNeil *received on Dec. 7, 1972* the documents referred to in that letter, among which was the check of Allstate Insurance Company #09-524060 dated 2/28/68 in the sum of $14,244.

29. Mr. MacNeil also wrote me asking if the drafts that were issued by Allstate *to Mrs. Kuchta and her daughter Sandra had been cashed. He realized from the copy of a letter I had sent to him that as of March 5, 1970, they had not been cashed. I told Mr. MacNeil by phone on Dec. 8, 1972 that this could be determined later as to Mrs. Kuchta and her daughter Sandra but I would like to hold up getting this information until the latest date after his talk with Mr. Kuchta. Of course, if Mrs. Kuchta has not cashed the drafts Allstrate is ready, able and willing, and I can so represent to the court, to issue a new drafts in their place.*

30. Under date of May 4, 1973, I received a copy of a letter, dated May 2, 1973, to Mr. Kuchta by Jay Scott MacNeil on behalf of Nolan & Lynes. A copy of this letter is attached hereto, made a part hereof, marked Schedule "L".

/s/ John J. Gaffey
JOHN J. GAFFEY

NOTARIZED



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PAYABLE THRU
ATLANTIC NATIONAL BANK
HEAD OFFICE
NEWARK, NEW JERSEY

Rice

A041

"N.J. Superior Court Clerk for Union County Law Division
Docket L 4 12 51 3-77 Allstate v Kuchta

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Allstate
NEW JERSEY REGIONAL OFFICE

ELEVEN THOUSAND SIX HUNDRED SIXTY FOUR DOLLARS AND 67/100ths $11,664.67

W. Lewis Bambrick,
N.J. Superior Court Clerk
Trenton, NJ

ALLSTATE INSURANCE CO.

1 2534

Edmund D. Kennedy

"09457513" :0212-0001: 0519-0570 6"

SIGHT DRAFT VOID IF NOT PRESENTED WITHIN ONE HUNDRED AND EIGHTY DAYS OF THE DATE OF ISSUE

24C

SUPREME COURT OF THE UNITED STATES

No. A-195

WALTER KUCHTA, ET AL.,

Petitioners,

v.

ALLSTATE INSURANCE COMPANY, ETC., ET AL.

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI

Upon Consideration of the application of petitioner(s),

It is Ordered that the time for filing a petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including November 4, 1982

/s/ William J. Brennan, Jr.
WILLIAM J. BRENNAN, JR.
Associate Justice of the Supreme Court of the United States

Dated this 23rd day of August, 1982.

ORDER

Filed July 7, 1982

This matter coming on before the Court on application of the defendants, Allstate Insurance Company and State of New Jersey, for an Order on the Mandate of the United States Court of Appeals for the Third Circuit in this matter affirming the judgment of the District Court and taxing costs in favor of the Allstate Insurance Company and against Walter Kuchta and this Court having considered the Mandate of the United States court of Appeals for the Third Circuit and for good cause shown;

It is on this 2nd day of July, 1982, ORDERED that judgment be entered in favor of the defendant, Allstate Insurance Company and against the plaintiff, Walter Kuchta for taxed costs in the amount of $5,418.00.

/s/ Vincent P. Biunno,
VINCENT P. BIUNNO,
J.U.S.D.C.

AFFIDAVIT

State of New Jersey:

: ss.

County of Union :

Lillian Kuchta, being duly sworn according to law upon her oath, deposes and says:

I, Lillian Kuchta, give power to my husband, Walter Kuchta to represent me, because I am unable to walk and get around.

I give all power of attorney to my husband, Walter Kuchta, to represent me in court, and if he is unable to preform his duties, my daughter Sandra Catalano will have the power of attorney to represent me.

/s/ Lillian Kuchta
LILLIAN KUCHTA

NOTARIZED

UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT

No. 80-2208

WALTER KUCHTA and LILLIAN KUCHTA and
UNITED STATES GOVERNMENT, et al.

v.

ALLSTATE INSURANCE COMPANY
and firm of McDERMOTT & McGEE, ESQS, and
STATE OF NEW JERSEY,
Walter Kuchta, Appellant

SUR PETITION FOR REHEARING EN BANC

Present: SEITZ, *Chief Judge*, ALIDSERT, ADAMS, GIBBONS, HUNTER, WEIS, GARTH, HIGGINBOTHAM, SLOVITER, BECKER and VAN DUSEN, *Circuit Judges*.

The petition for rehearing filed by Appellant,

in the above entitled case having been submitted to the judges who participated in the decision of this court and to all the other available circuit judges of the circuit in regular active service, no judge who concurred in the decision having asked for rehearing, and a majority of the circuit judges of the circuit in regular active service not having voted for rehearing by the court in banc, the petition for rehearing is denied.

By the Court,

Arlin M. Adams
Circuit Judge

Dated: June 7, 1982

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 80-2208

WALTER KUCHTA and LILLIAN KUTCHA and
UNITED STATES GOVERNMENT, et al.
v.
ALL STATE INSURANCE COMPANY and firm of
McDERMOTT & McGEE, ESQS., and
STATE OF NEW JERSEY

Walter Kuchta, Appellant

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
(C. A. No. 80-00405)

SUBMITTED UNDER THIRD CIRCUIT RULE 12(6)
May 3, 1982

Before: ADAMS, VAN DUSEN and WEIS,
Circuit Judges

JUDGMENT ORDER

After considering the contentions raised by appellant, it is

ADJUDGED AND ORDERED that the judgment of the district court be and is hereby affirmed.

Costs to be imposed on appellant.[1]

BY THE COURT,
/s/ Arlin M. Adams
ARLIN M. ADAMS,
Circuit Judge

ATTEST:

/s/ Sally Mrvos,
SALLY MRVOS, Clerk

DATED: May 10, 1982

1. Taxation of costs shall await the filing of bills of costs. The bills of costs shall itemize the per-page cost of the pages of the printed appendix separately from the cost of appellees' brief.

Costs taxed in favor of
Appellee as follows:
Brief . . . $5,418.00

Certified as a true copy and issued in lieu of a formal mandate on June 15, 1982.
Test: Chief Deputy Clerk, United States Court of Appeals for the Third Circuit

Third Circuit of Appeals—may I m sorry. First, the costs were deducted—first costs were deducted before *the money was paid into the Clerk of the Superior Court.*

THE COURT: That is on the 1969 case here.

MR. McDERMOTT: Yes, sir. The second set of costs were deducted by order of the state court on the basis of the order entered by the Third Circuit permitting those costs.

THE COURT: The proceeds are on deposit with the Clerk of the Superior Court minus those deductions and available to be drawn upon on as application by Mr. Kuchta.

MR. McDERMOTT: At any time.

MR. KUCHTA: Your Honor, may I ask, is it for three people, one person or what, the amount of money?

THE COURT: Well, do you know who it was *deposited?*

MR. KUCHTA: *Mrs. Kuchta was never paid.*

THE COURT: Do you know how it was *deposited? Is it in the name of the case?*

MR. McDERMOTT: Yes.

THE COURT: It's in the name of the case, Mr. Kuchta.

109THE COURT: Whoever claims to have an interest would then apply to the *state court* for whatever amount that person claimed, but I don't have that money. *The state court has that money.*

MR. KUCHTA: It's the wrong amount, because it's the *wrong* amount. *And my daughter was never paid* and *Mrs. Kuchta was never paid.* I was supposed to get *medical payments by order of the Court* for Mrs. Kuchta and Sandra Kuchta, which they don't want to pay.

MR. McDERMOTT: We are talking now about matters which were resolved years and years ago in the state court. The medical expenses referred to were paid as a part of the settlement. The medical liens were paid as part of the settlement. That is back years ago in the state court, over ten years ago. The settlement at that time included a settlement of the claims by all three of the Kuchta's, Mr. Kuchta, his wife and daughter, and releases were obtained, given by the Kuchta's from all three.

THE COURT: Who is Lillian Kuchta?

MR. KUCHTA: That was my wife, your Honor.

THE COURT: You can't represent her. You can only represent yourself. You can't represent somebody else. You're not a member of the Bar.

MR. KUCHTA: She was in a *wheelchair.*

THE COURT: I didn't say anything about her except the fact that you cannot represent anybody except yourself.

ORDER

(Filed March 2, 1978)

This matter having been opened to the Court by Order to Show Cause why the plaintiff, Allstate Insurance Company, should not be permitted to pay ito Court $11,664.67 due and owing to the defendant, Walter Kuchta, from the settlement of his suits against James and Antoinette Rice and Myron J. Levy, Esq., said Order to Show Cause having been returnable on February 10, 1978, and the matter having been heard on the aforesaid date, McDermott & McGee, esqs., by Michael F. O'Gara, Esq., appearing for the plaintiff, Allstate, and no one appearing for the defendant in opposition to this application and the Court having considered the Complaint and Affidavit submitted by the plaintiff in support of this application and the argument of counsel on its return date and the Court being of the opinion that good cause has been shown for the granting of this application, it is on this 22nd day of February, 1978;

ORDERED that the plaintiff, Allstate Insurance Company, be permitted to pay to the Clerk of the New Jersey Superior Court $11,664.67 due and owing to the defendant, Walter Kuchta from the settlement of his suits against James and Antoinette Rice and Myron J. Levy, Esq., and that said money shall be held by the Clerk pending an application to the Court by the defendnat, Walter Kuchta, to obtain said money or until the Court shall otherwise a disposition of this money so held by the Clerk.

/s/ James H. Coleman,
JAMES H. COLEMAN,
J.C.C.T/A.

LETTER DATED OCTOBER 23, 1980 TO WALTER KUCHTA FROM ALVIN J. FORTSON

Dear Sir:

We reply pursuant to your phone call of August 15, 1980 concerning the above matter.

Our records indicate the sum of $11,664.67 was deposited on March 6, 1978 by the plaintiff, Allstate Insurance Company pursuant to an Order signed on Feb. 22, 1978 by Judge James H. Coleman in this matter.

Therefore there remains on deposit a balance of $11,342.89 plus accrued interest in this action.

Very truly yours,

/s/ Alvin J. Fortson,
ALVIN J. FORTSON,
Assistant Deputy Clerk

LETTER DATED JUNE 16, 1982 TO MS. SALLY MRVOS, CLERK FROM JOHN L. McDERMOTT

RE: Kuchta, et al. v. Allstate, et al.
Our File: 18236 JLM
No. 80-2208

Dear Ms. Mrvos:

We received Mr. Kuchta's Notice of *Motion dated June 12, 1982*. Please be advised that we, in response, will rely on our brief and appendix I heretofore filed on the appeal of this matter.

Respectfully yours,
McDERMOTT, McGEE
& RUPRECHT

/s/ John E. McDermott
JOHN E. McDERMOTT

JLM:dl
cc: Mr. Walter Kuchta
John J. Hayden, Deputy Attorney General

NOTICE OF MOTION

(Filed June 14, 1982)

Please take notice I Walter Kuchta appeal to the third circuit court to look into the petition for rehearing as the proof of the missing court award and jury award are in the petition for rehearing. The defendants state of New Jersey, Allstate Insurance Co., and Lawyer McDermott did not file an answer to the court. By law the plaintiff appellants should have won the appeal for rehearing. They the state of New Jersey, Allstate Insurance Co., and lawyer could not file an answer to the court because the proof and court order shows the proof. All the proof is in the petition for rehearing, and I pray to the court for a motion for a stay bill of cost to look into the petition for rehearing on this motion, and review the petition for rehearing. The court should look into the petition for rehearing before awarding the bill cost to McDermott of $5,418.00 which is to high, and *because of the stolen jury awards and court award.* I pray that the court accept this motion before the court. I appeal to the court to have it in open court.

/s/ Walter Kuchta
WALTER KUCHTA
Box 101
Linden, New Jersey 07036

June 12, 1982

N.J. STATUTE
Rule 9. Pleading Special Matter

* * *

(b) Fraud, Mistake, Condition of the Mind. In all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity. Malice, intent, knowledge, and other condition of mind of a person may be averred generally.

4:5-8. *Pleading Special Matters*

(a) Fraud; Mistake: Condition of Mind. In all allegations of misrepresentation, fraud, mistake, breach of trust, willful default or undue influence, particulars of the wrong, with dates and items if necessary, shall be stated insofar as practicable. Malice, intent, knowledge, and other condition of mind of a person may be alleged generally.

CIVIL ACTION

O R D E R

This matter coming on before the Court on application of McDermott, McGee & Ruprecht, Esqs., attorneys for plaintiff, for an Order directing the Clerk of the New Jersey Superior Court to pay to Allstate Insurance Company out of the funds paid to the Clerk pursuant to Order of this Court dated February 22, 1978 the amount of $5,418.00; and it appearing to the Court that said motion should be granted; and for good cause shown;

It is on this _____ day of _____, 1982, O R D E R E D that the Clerk of the Superior Court of New Jersey pay to Allstate Insurance Company out of the funds paid to the Clerk purusant to Order of this Court, dated February 22, 1978

* * * EXCERPTS * * *

that Court to be held pending an application of the plaintiff to *receive these monies*. The Court below properly dismissed this most recent Compalint. There were simply no justiciable, disputed or debtable issues of fact before that Court. *See Kemper v. American Broadcasting Companies, Inc.*, 365 F. Supp. 1275 (1973 U.S. District Court, S.D. Ohio, W.D.).

In the Complaint filed most recently by this appellant (paragraph 6), the appellant alleges that the defendants told the United States Government to drop their bill of about *$10,000* but did not tell the truth, etc. What is referred to there is a medical bill of $10,000 whicha ccrued to the *United States Government for medical care rendered* to the plaintiff. The amount of that bill was negotiated with the U.S. Government by the attorney then representing the appelant. The negotiated amount

of that bill was ultimately *paid by the defendant, Allstate, as part of the* settlement worked out in this matter many years ago.

Allstate never paid any money to the government, they lied.

LETTER DATED OCTOBER 5, 1967 TO MEAD, GLEESON, HANSEN & PANTAGES, ESQS. FROM JAMES G. LOMBARDO

Gentlemen:

We have communicated with our General Counsel in Washington, D.C., concerning the matter set forth in your letter of September 29, 1967 and our previous conversation relative to the adjustment of bills of the VA Hospital, East Orange, New Jersey, covering treatment of the veteran from and after June 30, 1960. An adjustment thereof is sought in order that a settlement could be finally concluded for $19,500.00, against the tort feasors under the prevailing facts and circumstances.

It was determined that a complete and absolute waiver and release by the Veterans Administration of any and all claims for medical and hospital care and treatment furnished or to be furnished Walter L. Kuchta would best serve the interests of justice and restore the orderly process, dignity and public relations to our New Jersey Court System. It is anticipated that this decision, by making more funds available to the veteran, may bring about a complete and final settlement of the myriad suits and appeals brought by him and that it may be conducive toward his rehabilitation and the direction of his further efforts toward making a new life for himself through resumption of employment and the support of himself and his family. This letter may be treated as evidence of the complete waiver and release of all claims of the Veterans Administration as set forth herein.

Please advise this office when the settlement funds are disbursed and the manner of disbursement in order that we may close out our hospital collection file.

A copy of this letter is being furnished for the information of the Honorable Ervin S. Fulop, whose untiring efforts together with other members of the judiciary in effecting this settlement have been noted and considered in our determination.

Sincerely yours,

/s/ James G. Lombardo
JAMES G. LOMBARDO
Chief Attorney

cc: Honorable Ervin S. Fulop

LETTER DATED FEBRUARY 13, 1962 TO LOUIS L. FORMAN, ESQ. FROM MYRON L. LEVY

Re: Kuchta, et al
vs. Rice, et al

Dear Louis:

Referring to your letter of February 8 (second paragraph thereof) you are aware of the fact that the order denying motion for new trial was mailed to you by Mr. Lynch and you accordingly mailed it to me. I returned the said order to Mr. Lynch with request that he redraft it to embody the provision regarding entry of the additional judgment that he has consented to (that is judgments in favor of plaintiff Walter Kuchta for $10.00 for the medical expenses of Mrs. Lillian Kuchta and $120.00 for the medical expenses of the child, Sandra). I recently discussed this personally with Ed Gavarny, Esq. and he informed me that entry of such judgments would be improper according to law notwithstanding the fact that Mr. Lynch stated for the record at the time of the argument of motion for new trial that he was in accord therewith. I do not observe anything improper about it and I requested that he prepare an order for the entry of such judgments. I have not received the order as yet and in view thereof, it may be advisable for you to contact Mr. Gavarny regarding the same, since you argued the motion. I might add further that as I view the matter, it really does not make much difference as to whether or not an order is entered for the said judgments, since Mr. Lynch advised me some time ago (and before the time of

the arguing of motion) that the company would pay the said additional amounts.

Very truly yours,

/s/ Myron L. Levy
MYRON L. LEVY

MLL:nrz

EXCERPTS FROM ANSWER

***judgments rendered in favor of Lillian Kuchta in the sum of $300.00 and in favor of Walter L. Kuchta, as guardian ad litem of Sandra L. Kuchta, in the sum of $500.00; that defendant paid to Lillian Kuchta, individually and as the person authorized by the Surrogate of Union County to act on behalf of Sandra Kuchta, the aforementioned sums of $500.00 and $300.00, and that a warrant for the satisfaction of said judgments was caused to be filed with the Clerk of the Superior Court of the State of New Jersey, by the attorneys it had appointed to represent James Rice and Antoinette Rice.

5. It denies the allegations of paragraph 5.

6. It denies the allegations of paragraph 6.

7. It denies the allegations of paragraph 7.

8. It denies the allegations of paragraph 8.

9. It denies the allegations of paragraph 9.

10. It denies the allegations of paragraph 10.

11. It denies the allegations of paragraph 11 but says that a check was drawn by defendant to the order of Walter L. Kuchta and Lillian Kuchta, his wife, but this

check was refused by Walter Kuchta who requested defendant to have the check drawn to his own order in the sum of $14,244., with which request the defendant complied, and that defendant forwarded said check to plaintiff, Walter Kuchta, certified mail, return receipt requested, to his residence, but the said Walter Kuchta did not accept said certified mail; that thereafter the defendant wrote to Walter L. Kuchta, sending the letter by regular or ordinary mail, and asking Walter Kuchta to accept the check for $14,244, but the said Walter Kutchta has neglected and refused to accept the same.

EXCERPTS FROM DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

* * *address on a piece of paper and gave it to Mr. Kuchta and asked him to see Miss McCarthy the next day. He told me he would keep the appointment. I wrote Judge Garth on what I had done.

28. On Dec. 4, 1972, I received a message from my secretary that Mr. Jay Scott MacNeil of the law firm of Nolan & Lynes had phoned me. I returned the call and spoke to Mr. MacNeil. He told me that his firm was representing Mr. Kuchta and requested certain information pertaining to the case. Attached hereto is a copy of a letter (marked Schedule "K") I wrote to Mr. MacNeil, dated Dec. 6 1972, which you will note Mr. MacNeil received on Dec. 7, 1972 the documents referred to in that letter, among which was the check of Allstate Insurance Company #09-524060 dated 2/28/68 in the sum of $14,244.

29. Mr. MacNeil also wrote me asking if the drafts that were issued by Allstate to Mrs. Kuchta and her daughter Sandra had been cashed. He realized from the copy of a letter I had sent to him that as of March 5, 1970, they

had not been cashed. I told Mr. MacNeil by phone on Dec. 8, 1972, that this could be determined later as to Mrs. Kuchta and her daughter Sandra but I would like to hold up getting this information until the latest date after his talk with Mr. Kuchta. Of course, if Mrs. Kuchta has not cashed the drafts, Allstate is ready, able and willing, and I can so represent to the court, to issue a new drafts in their place.

30. Under date of May 4, 1973, I received a copy of a letter, dated May 2, 1973, to Mr. Kuchta by Jay Scott MacNeil on behalf of Nolan & Lynes. A copy of this letter is attached hereto, made a part hereof, marked Schedule "I".

/s/ John J. Gaffey
JOHN J. GAFFEY

EXCERPTS FROM DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

* * *

THE COURT: Mr. and Mrs. Rice, did you say?

MR. SELLAR: Stipulation of dismissal with prejudice with reference to that suit.

THE COURT: Yes.

MR. SELLAR: I want a release from Mr. and Mrs. Kuchta running to Mr. and Mrs. Rice.

THE COURT: That is right.

MR. KUCHTA: I have to sign a release when (5) you go for the money.

THE COURT: Mrs. Kuchta also has a judgment for what, $200?

MRS. KUCHTA: I don't know the amount.

THE COURT: Whatever the amount is, that will be settled and you will sign papers and you will get the money.

MR. SELLAR: A satisfaction of judgment on that.

THE COURT: Then Sandra has about $500 and she will get that and you will take that as her guardian, not exactly guardian, but by affidavit.

MR. SELLAR: Yes.

THE COURT: I say you, I mean Mrs. Kuchta.

MR. SELLAR: It will also be necessary that we have a release running to Mr. Levy.

THE COURT: Yes.

MR. SELLAR: Since Mr. Levy's fees are being paid, a release from Mr. Levy back to Mr. and Mrs. Kuchta for that particular matter.

THE COURT: Are you satisfied with that, give him a release?

EXCERPTS FROM ARGUMENT

Trial Court did not err in granting Allstate's motion for Summary Judgment.

In the interest of brevity, we incorporate herein the matters contained in our Brief and Appendix in appeal docket No. 75-1272 which has been filed herewith. The Brief and Appendix set forth the history of this litigation which the plaintiff-appellant has continued since 1959.

Particular attention is called to the Memorandum Opinion and Order of Judge Vincent P. Biunno dated September 25, 1974 which summarizes this protracted series of suits.

Following this Court's denial of the plaintiff-appellant's prior Appeal and the Supreme Court's denial of his petition for certification, the plaintiff simply filed a new Complaint making the same allegations and seeking the same relief as before. It is from the dismissal of this new Complaint that he now again appeals. The facts and matters before Judge Biunno on Allstate's Motion for Summary Judgment are not denied. The motion was properly granted. There were simply no justiciable, disputed or debatable issues of fact before the Court. See *Kemper v. American Broadcasting Companies, Inc.*, 365 F. Supp. 1275 (1973 U.S. District Court, S.D. Ohio, W.D.).

The plaintiff-appellant in this appeal has added that Allstate has "attempted to steal $2,579.33." The amount referred to is the amount of the taxed costs awarded Allstate by this Court following the denial of plaintiff-appellant's last appeal. This is not true only to steal my wife and infant daughters' money.

EXCERPTS FROM DAMa10

***putting in incorrect amount in the state fund. The alleged negligence of defendants putting into state courts without a defendant which could not defend himself and for Lillian Kuchta who had cancer to get all money but they are out to steal the money instead of giving the money correct and right amount.

8. The State of New Jersey is responsible to see justice and correct amount of money but instead accepted the incorrect amount of money in the alleged negligence of the State of New Jersey.

9. The alleged negligence of defendants not settling the matter for full interest and medical expenses of the Kuchta family. Allstate went against their agreement for medical that the court ordered and they refused to pay this also the lawyer and the State of New Jersey is responsible.

10. The alleged negligence of defendants of not giving the correct amount to the Kuchta family.

11. The alleged negligence of defendants causing hardship for the family over the years and which may be years to come because of bad faith against the Kuchta family.

12. Because of stealing and bad faith wherefore, all counts are to be incorporate as one count.

Wherefor plaintiffs demands judgment against defendants in the sum of $20,000,000 that is twenty million dollars plus interest and cost together with expense.

Request trial by jury.

February 11, 1980.

/s/ Walter Kuchta
WALTER KUCHTA
Box 101
Linden, N.J. 07036

EXCERPTS FROM COMPLAINT
(Original Filed February 14, 1980)

1. Plaintiffs reside in New Jersey and has a Post Office box number which is Box 101, Linden, N.J. 07036, in the northern District of New Jersey and is a citizen of the United States.

2. United States Government and Veterans Administration, Washington, D.C.

3. Defendant is a corporation of the State of Illinois with its principal office in Skokie, Illinois, and it is authorized to do business and is doing business in the state of New Jersey (Allstate Insurance Company).

4. Defendant of firm of McDermott & McGee Esqs. who represented Allstate and is helping to steal money from the plaintiffs and the firm of McDermott & McGee address is 64 Main Street, Millburn, N.J.

5. Defendant State of New Jersey is helping Allstate and the firm of McDermott & McGee Esqs. by accepting the wrong money and not the correct amount and that is fraud and the state is responsible for the correct amount and also the money of Lillian Kuchta and daughter, the money for Walter Kuchta in the trust fund was put in illegal in court without defendant and did not put the correct amount which they are going to steal and the amount of money they are keeping or stealing from Lillian Kuchta and daughter which was never paid again they are out to steal this money which the State of New Jersey is helping them and is responsible no money was ever paid.

6. Defendants told the United States Government to drop their bill of about $10,000, but did not tell the truth and refused to give the correct amount of money to the family.

7. The alleged negligence by defendants of not having the correct amount of money for the Kuchta family and

LETTER TO HON. CLIFFORD CASE FROM GEORGE L. HOLLAND

Dear Senator Case:

Mr. Kutcha's claims folder is under the jurisdiction of the Veterans Administration Regional Office, 20 Washington Place, Newark 2, New Jersey. Your letter is being referred to the reply.

Very truly yours,

/s/ George L. Holland
GEORGE L. HOLLAND
Manager

The Federal Civil Rights Act, 42 U.S.C. 1983 provides: Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any state or territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities accused by constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proceeding for redress." This is on page 27 and this fraud was done to the courts and petitioner. I was denied a fair hearing in open court. Denied to hear motion of June 12, 1982 and McDermott and Allstate did not file any papers for redress. The Allstate insurance and firm of McDermott wanted Government records.

SUPERIOR COURT OF NEW JERSEY

LAW DIVISION UNION COUNTY
DOCKET NO. LI2513-77

CIVIL ACTION
NOTICE OF POSTPONEMENT

ALLSTATE INSURANCE CO, ET. AL.

Plaintiff

vs.

WALTER KUCHTA ET. AL.

Defendant.

Sir:

Please postponement of March 23, 1979 my motion to April 27, 1979 because my wife who has termoil canser who has appointment with hospitol and doctor on March 23, 1979 before his Honor James H Colman motion.

/s/ Walter Kuchta
WALTER KUCHTA
Box 101
Linden, N.J.

March 20, 1979

CC: Allstate Insurance Co., Murray Hill, N.J. Certified No. 908999
CC: Lewis Bambrick

Clerk of the Superior Court State Annex
Trenton, N.J.

CC: John D. Callhan
Associate Vice President of Allstate,
Mountain Avenue, Murray Hill, N.J.

Original Copies 908997
Certified No. 909000

CC: Clerk of Superior Court, Elizabeth Court,
Elizabeth, N.J.
CC: Clerk of Superior Court, Elizabeth, N.J.

Copies Certified No. 908998

BORO MEDICAL ASSOCIATES
280 MAIN STREET
METUCHEN, NEW JERSEY 08840

(201) 494-2021
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Internal Medicine and Hematology

LEWIS J. KAMPEL, M.D.
Internal Medicine and Medical Oncology

March 30, 1979

To Whom It May Concern:

Re: Lillian Kuchta

Mrs. Kuchta is under my care for metastatic carcinoma of the uterus. Because of the immuno-suppressive effect of her disease and its treatment, she should not receive a vaccination.

She is currently receiving a mixture of morphine and cocaine in an aromatic elixir, (Brompton's Mixture), for her pain.

This letter in no way indicates my approval for her trip.

/s/ Lewis J. Kampel, M.D.
LEWIS J. KAMPEL, M.D.

LJK/dp